IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5172 of 1983
with
SPECIAL CIVIL APPLICATION No.5177 of 1983

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNABEN B BHATT

Versus

KHEMCHAND LAXMICHAND INSTITUTE

Appearance:

1. Special Civil Application No. 5172 of 1983

MR SK JHAVERI for Petitioner No. 1

MR RJ OZA for Respondent No. 1

MR.M.S. RAO, ASSISTANT GOVERNMENT PLEADER for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 29/01/2004

COMMON ORAL JUDGEMENT

As both these matters have a common question, the same are heard and decided by this common judgement. The facts of the case in Special Civil Application No.5172 of 1983 are that the petitioner-Bhavnaben Bhodanath Bhatt was appointed as House Mother after she was selected by the Committee with effect from 14th July 1980, by a letter of appointment dated 15.07.1980. It is the case of the petitioner that though her services were continued in the next year, fresh appointment was given on 10.7.1981. During the service tenure of the petitioner, a post of Hostel Superintendent of Adult Training Hostel run by respondent no.1 had fallen vacant, the petitioner was asked to hold charge of the said post from 01.09.1981 by a letter dated 11.09.1981. Thereafter, letter dated 01.07.1982 was issued and she was appointed as House Mother on probation upto 30.04.1983. The period of probation was then extended till the end of the 1st term of the academic year 1983-84 by letter dated 27.05.1983.

2. Respondent no.1 then terminated the services of the petitioner by letter dated 10.09.1983 with effect from 28.10.1983 on the ground of unsuitability, which made the petitioners to approach this Court by way of this petition (Special Civil Application No.5172 of 1983).

3. The petitioner in Special Civil Application No.5177 of 1983, Savitaben Nanjibhai Makwana was also selected and appointed as Attendant in April 1979 by appointment order dated 14.05.1979. While the petitioner continued in service of respondent no.1, she was issued another appointment order on 20.06.1980. It is the case of the petitioner that the petitioner had to discharge her duties for all the 24 hours. But when she was not in a position to discharge her duties for any particular period during 24 hours in the hostel, she was required to make an alternative arrangement for another attendant, and that attendant was paid by her out of her own pay. The case of the petitioner is that the petitioner's services were found satisfactory and she was issued further letters of appointment dated 14.09.1979, 20.06.1980 and by letter dated 15.07.1981 she was confirmed.

4. The petitioner (in Special Civil Application No.5177 of 1983) was informed by letter dated 06.03.1982 that her services were terminated with effect from 30.04.1982 on the ground that her age was not as prescribed under the rules, but then, she was never informed as to what is the age required under the rules. The case of the petitioner is that she was born on

25.09.1957 and when she first came to be appointed on 01.04.1979, she had completed 21 years of her age and when she came to be confirmed by letter dated 15.07.1981 she was more than of 23 years of age and had completed 24 years of age when the impugned letter/ order dated 06.03.1982 was issued. The petitioner was issued certificate dated 01.05.1982 for having rendered satisfactory services during the period of three years, i.e. 1979-80, 1980-81, and 1981-82. She was continued in service from 01.05.1982 to 24.09.1982 for which she was paid salary after deducting from the salary of some other employees. Fresh letter of appointment dated 15.10.1982 was issued appointing her as Attendant, with effect from 15.10.1982, on probation. This period of probation was extended by letter dated 30.5.1983 till the end of first term of the academic year 1983-84. It is the case of the petitioner that she was not allowed to join duties until she signed the relieving order and when she asked for a copy of the said relieving order, she was threatened and was forced to leave the premises. Being aggrieved of the letter dated 10.09.1983, whereby the services of the petitioner were sought to be terminated for the second time the present petition is filed.

5. The petitions were filed on 20.10.1983 and on 21.10.1983 this Court was pleased to issue notice, pending admission to respondent no.1, returnable on 17.11.1983 and was further pleased to grant ad interim relief in terms of para 13(B) in Special Civil Application No.5177 of 1983 and in terms of para 10(B) in Special Civil Application No.5172 of 1983. Para 13(B) and 10(B) are verbatim the same, which reads as under:

> "13(B) Pending the final hearing and disposal of this petition the Honourable Court be pleased to issue an interim injunction restraining the respondent no.1 from implementing the order at Exh. 'D' dated 10th September 1983, terminating the service of the petitioner."

6. Thereafter, an amendment was moved in the matters and in view of the amendment the matters were required to be placed before a Division Bench. The Division Bench by order dated 06.04.1984 issued rule, and ad interim relief granted on 21.10.1983 was ordered to continue till final disposal of the petition and the petition were expedited.

7. By virtue of interim relief granted by this Court both the petitioners continued in service and by now they have completed their services of more than two decades.

That is why when in the year 2000 the matters reached their hearing before Brother Justice S.K. Keshote, it was inquired from the learned advocate appearing for the respondent institute as to whether they have anything serious to contend against the continuance of the present petitioners in service as they have already put in more than 17 years of service by that time. The matters were adjourned on various occasions and today when the matters are called out, the learned advocate Mr.R.J. Oza appearing for the respondent institute placed on record a letter dated 03.12.2003 addressed to him by the respondent institute. It is stated therein that,

"1. In the case filed in 1983 we shall continue both the employees without any prejudice if the Honourable Court issues an order to that effect and provided the Director, Social Defence Dept. (Govt. of Gujarat) gives their approval for the same.

2. It is also requested not to include any other issue except those issues which have arisen from the letter of the Institute dt. 10.09.1983 and that all the rules and regulations of discipline will be applicable to both these employees as applicable in the case of other employees and the Institute reserves its rights to initiate and carry out necessary proceedings if and whenever required.

3. The Institute will endeavour without any prejudice to extend the benefits sanctioned to the Govt. employees by the Govt. as also by the Director, Social Defence Department (Gujarat State), to these two employees."

8. Mr.R.J. Oza, the learned advocate appearing for the respondent institute submitted that this may not be treated as unwillingness on the part of the respondent-institute to contest the matter on merits, but then he is live to the fact that may be by virtue of an order of this Court, both these petitioners have put in the service of more than two decades by now and nothing serious against any of these petitioners is either on record of this case or with the respondent-institute, except against the petitioner in Special Civil Application No.5177 of 1983, namely, Savitaben Nanjibhai Makwana, who is alleged to have undertaken some training, during duty hours. Be that as it may. It does not warrant this Court to discuss the same in detail as the

petitioners being in employment of the respondent-institute, are subject to the Discipline Rules on the subject.

9. From the aforesaid facts, it transpires that this is a case wherein two petitioners were appointed by the respondent institute at the relevant time by appointment orders which are referred to hereinabove. Not only that it is the case of the petitioners that confirmation orders were also issued in their favour though this is not admitted by the learned advocate appearing for the respondent institute. It also transpires from the text of the orders of appointment, orders of extension of probation period and subsequent orders in this regard, that no serious charge was ever levelled against any of the two petitioners. Therefore, taking into consideration the important aspect of the matter and possibly the only aspect which is required to be taken into consideration by this Court, namely, 20 long years of service put in by the petitioners with the respondent institute, this Court is of the opinion that it is too late in a day to adjudicate upon the validity of the impugned order dated 10.09.1983 and to hold that the order was validly issued. Taking into consideration the fact that the petitioners have put in more than 20 years of service without there being anything serious except the one which is mentioned hereinabove, this Court is of the considered opinion that the order dated 10.09.1983 is required to be quashed and set aside qua both the petitioners of these petitions. Ordered accordingly.

10. So far as the approval by the Director of Social Defence Department, Government of Gujarat is concerned, at the relevant time when appointment orders, extension orders of probation period and subsequent orders were issued, explicit/ implied approval was granted. Nothing is brought on record to show that, for any specific reason the Director of Social Defence Department, Government of Gujarat had withdrawn that approval. It is a matter of record that all these years the Government has paid the grant for the salary of these two petitioners. In case the order dated 10.09.1983 is held to be valid, a situation will arise which may not be palatable because then the Institute will be required to refund the amount of the grant which is paid to these petitioners by way of remuneration, by the respondent institute. In view of that the approval from the Director, Social Defence Department, Government of Gujarat is deemed to have been continued for all these years as there is nothing on record to suggest even remotely the withdrawal of approval.

11. It will, therefore, be appropriate and in fitness of things to declare that the rules and regulations which are applicable to all other similarly situated employees will be applicable to the petitioners with equal force and they will be bound by the rules and regulations which govern the other similarly situated employees.

12. In the result, these petitions are allowed. The impugned order dated 10.09.1983 is hereby quashed and set aside. The respondent institute is directed to treat both the petitioners of these petitions to be in service as if the impugned order dated 10.09.1983 was never passed.

13. The Director, Social Defence Department, Govt. of Gujarat is also directed to treat the approval, granted at the initial stage to have been continued for all this time and to continue in future qua the employment of these petitioners. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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